

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONESAFER LAMAR BLANCH, JR.,

Defendant-Appellant.

UNPUBLISHED

March 13, 2012

No. 300508

Wayne Circuit Court

LC No. 09-031216-FC

Before: SAAD, P.J., and K.F. KELLY and M.J. KELLY, JJ.

PER CURIAM.

Defendant appeals his convictions for armed robbery, MCL 750.529; felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. The trial court sentenced defendant to concurrent terms of 6 to 15 years in prison for the armed robbery conviction and one to five years in prison for the felon in possession of a firearm conviction, to be served consecutive to a five year term of imprisonment for his second offense felony-firearm conviction. For the reasons set forth below, we affirm.

Defendant argues that he is entitled to a new trial because there was a breakdown in the relationship between defendant and his trial counsel and the trial judge failed to conduct an adequate inquiry into the breakdown. Because the trial court considered the issue and ruled that defense counsel would not be removed, we consider this issue preserved.

We review for an abuse of discretion a trial court's decision regarding whether to appoint substitute counsel. *People v Meyers (On Remand)*, 124 Mich App 148, 165; 335 NW2d 189 (1983). A defendant "is only entitled to a substitution of counsel upon a showing of good cause, provided that the substitution of counsel will not unreasonably disrupt the judicial process." *Id.* at 165. Good cause exists where "a legitimate difference of opinion develops between a defendant and his appointed counsel as to a fundamental trial tactic," *People v Williams*, 386 Mich 565, 574; 194 NW2d 337 (1972), where a dispute between the defendant and the defendant's appointed attorney leads to a "destruction of communication and a breakdown in the attorney-client relationship," *People v Bass*, 88 Mich App 793, 802; 279 NW2d 551 (1979) (citation omitted), or where inadequacy, lack of diligence, or disinterest on the part of counsel is shown, *People v Ginther*, 390 Mich 436, 442; 212 NW2d 922 (1973). However, "a mere allegation that a defendant lacks confidence in his attorney, unsupported by a substantial reason,

does not amount to adequate cause, particularly when the request is belated.” *People v Tucker*, 181 Mich App 246, 255; 448 NW2d 811 (1989), remanded sub nom *People v Musick*, 437 Mich 867 (1990). In addition, questions of professional judgment or disagreements about trial strategy are not sufficient cause for the appointment of substitute counsel unless a “bona fide irreconcilable dispute regarding, for instance, a substantial defense” is involved. *People v Krist*, 93 Mich App 425, 436-437; 287 NW2d 251 (1979). Further, “[a] defendant may not purposely break down the attorney-client relationship by refusing to cooperate with his assigned attorney and then argue that there is good cause for a substitution of counsel.” *Meyers*, 124 Mich App at 166-167.

Here, defendant did not show a breakdown in the attorney-client relationship. Although defendant and defense counsel initially disagreed over whether defendant should testify, the record does not show that the disagreement rose to the level of a “bona fide irreconcilable dispute.” See *Krist*, 93 Mich App at 436-437. After the trial court advised defendant of his rights, defendant stated that he wished to remain silent, a decision that was in accord with defense counsel’s recommendation. Thus, there was no irreconcilable disagreement over a fundamental trial tactic, because defendant ultimately agreed with defense counsel’s plan not to call defendant as a witness.

Further, the record does not indicate that there was a “destruction of communication” between defendant and counsel. *Bass*, 88 Mich App at 802. Although the relationship between defendant and defense counsel was strained, communication had not ceased. In fact, at the time defense counsel brought the problem to the court’s attention, counsel stated that he spoke to defendant seven times that day. Further, to the extent that communication was limited, it appears that it was the result of defendant’s disruptive behavior. A review of the record indicates that defendant yelled at counsel, called counsel derogatory names, and became physically violent, banging loudly on a door in the holding cell. Where, as here, difficulties in the attorney-client relationship are caused by the purposeful actions of the defendant, the defendant has not shown good cause for the substitution of counsel. *Meyers*, 124 Mich App at 166-167.

Further, there is nothing in the record demonstrating inadequacy, lack of diligence, or disinterest on the part of defense counsel. In addition, the colloquy that defendant claims was a request for substitute counsel did not take place until midway through the first, and only, day of testimony. Appointment of substitute counsel would have required an adjournment, thereby significantly disrupting the judicial process. Because defendant failed to show good cause for the appointment of substitute counsel, and because appointment of substitute counsel would have significantly disrupted the judicial process, the trial court’s failure to appoint a substitute attorney was not an abuse of discretion.

We also find no merit to defendant’s contention that the trial court did not conduct an adequate inquiry into the alleged breakdown. In *Bass*, 88 Mich App at 802 (citation omitted), this Court held that “when defendant alleges the existence of a dispute leading to a destruction of communication and a breakdown in the attorney-client relationship, the judge is obligated to inquire whether such allegations are true.” In *People v Ceteways*, 156 Mich App 108, 119; 401 NW2d 327 (1986), this Court held that, under such circumstances, the court’s duty is to “elicit testimony from the attorney and the defendant in order to assess any issues of fact.” Here, contrary to defendant’s assertion, the trial court inquired about the nature of the problem and

defendant had ample opportunity to express his concerns to the trial court. The record reflects that the trial court allowed defendant to air his complaints, it considered defense counsel's statements and, after assessing the truth of defendant's assertions, exercised its discretion in ruling that the problems between defendant and his attorney did not necessitate appointment of substitute counsel.

We also disagree with defendant's contention that the trial judge placed docket concerns above fairness. The record simply does not support this claim. Further, consideration of a proposed substitution's potential effect on the judicial process is appropriate where, as here, the record shows that the court thoroughly evaluated whether there was good cause to appoint substitute counsel. See *People v Cousins*, 139 Mich App 583, 594; 363 NW2d 285 (1984); *Meyers*, 124 Mich App at 165.

Affirmed.

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly